



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

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July 29, 1981

B-204071

Mr. Richard R. Hite  
Principal Deputy Assistant Secretary -  
Policy, Budget, and Administration  
United States Department of the Interior  
Washington, D.C. 20240

Dear Mr. Hite:

This letter is in response to your letter dated July 20, 1981, concerning the [appointment of former Comptroller General of the United States Elmer B. Staats to a position in the Department of the Interior]. You are particularly concerned about the effect of such appointment on Mr. Staats' retirement annuity and ask whether:

"(1) his annuity must be reduced by the amount of compensation he receives from the Department of the Interior, or (2) he may receive compensation from the Department in addition to his annuity, and the authority therefor."

Under the statutory authority of 31 U.S.C. 43, Mr. Staats may receive compensation from the Department of the Interior without any reduction in either his salary or his retirement annuity.

The extent to which a Federal retirement annuity may be affected by the recipient's acceptance of a new position in the Government service is a matter for determination under the specific provisions of statute which pertain to that particular annuity or to the new position. For example, the statutory provisions of 5 U.S.C. 8344 direct that annuitants under the Civil Service retirement system who are reemployed by a department or agency may not receive both their annuity and full salary during a period of reemployment, and employing agencies are required to deduct an amount equal to the annuity payments from reemployed annuitants' salaries for deposit in the Treasury to the credit of the Civil Service retirement fund. Distinctly different statutory rules apply to Foreign Service annuitants and retired military personnel who are appointed to Government positions. See 22 U.S.C. 1112 and 5 U.S.C. 5532. Thus, in any situation of this nature, the provisions of statutory law governing the particular retirement program under consideration are controlling.

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Section 43 of title 31, United States Code, specifically governs the retirement of a person serving as Comptroller General of the United States and authorizes the General Accounting Office to pay him an annuity after he leaves office. Section 43 directs that a former Comptroller General being paid that annuity may not receive any other retirement benefits under any other law of the United States, but it contains no authority for withholding or reducing the amount of the annuity if he is reemployed by the Government. Hence, in Mr. Staats' situation, it is our view that the annuity being paid to him by our Office may not be reduced on account of his acceptance of a compensated position with the Department of the Interior, nor are we aware of any basis for reduction of his salary by the Department of the Interior for services rendered concurrent with the receipt of the annuity.

We are fully aware of earlier decisions issued by our Office in which the view was expressed that, in certain circumstances, a reemployed annuitant could not receive retirement benefits concurrently with the salary of his position even though there was no statutory provision for a reduction in retirement benefits. In 16 Comp. Gen. 121 (1936) it was held that a Foreign Service annuitant could be employed in the Civil Service, but that during such employment he was not entitled to his annuity. The employee involved brought suit in the Court of Claims and the Court held that the annuity was not to be reduced on the basis that the individual had been employed in the Civil Service. Brunswick v. United States, 90 Ct. Cl. 285 (1940). In other words, he was entitled to both salary and annuity. In 1952 the Comptroller General refused to follow that rule and advised the Secretary of State to discontinue the annuities of individuals employed in the Civil Service. 32 Comp. Gen. 89 (1952). However, a statute was subsequently passed establishing rules for paying annuities to Foreign Service annuitants employed in the Civil Service. See section 872 of the Foreign Service Act of 1946 as added by section 44 of the Foreign Service Act Amendments of 1960, September 8, 1960, 74 Stat. 846, as amended, 22 U.S.C. 1112.

Again in 45 Comp. Gen. 383 (1966), it was held that an annuitant could not receive his annuity while employed by the Federal Government. In this case a Civil Service annuitant was appointed to a Federal judgeship. But in 1974 that decision was reevaluated and it was concluded that it had been incorrect. Our General Counsel noted particularly that the

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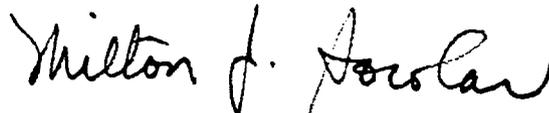
Civil Service Commission had been given authority to make final determinations regarding the payment of Civil Service annuities.

Although the rule on which the cited decisions are based--that a Federal annuity must be discontinued when an annuitant is employed in a Federal position even though no statutory provision requires such action--has not been overruled specifically, none of the situations treated could arise again under the provisions of statutory law now applicable. As to the application of that rule to payment of the former Comptroller General's annuity, we are persuaded that the rule in Brunswick, supra, should be controlling in this and similar cases and that, in the absence of specific statutory law permitting us to decrease or suspend the Comptroller General's annuity, it may not be done on the basis of his acceptance of some other Federal employment. Accordingly, the rule regarding discontinuance of annuities upon acceptance of Federal employment as applied in 16 Comp. Gen. 121, 32 Comp. Gen. 89, and 45 Comp. Gen. 383 will no longer be followed.

Although we have not been advised of the specific provision of law under which payment will be made to Mr. Staats as an employee of the Department of the Interior, we are aware of no general law which would require reduction of the pay otherwise allowable as a result of his receipt of an annuity as former Comptroller General. In the absence of such a general law or a specific provision relating to the authority under which payment will be made, the full compensation otherwise allowable may be paid.

We trust this will satisfy the purpose of your inquiry.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States